

APPENDIX I - Guidelines For Negotiation

These guidelines were developed primarily for procurement by competitive negotiation for goods and non-professional services. However, much of the data is applicable to competitive negotiations for professional services, negotiation for technical proposals, non-competitive negotiation and negotiation for resolution of problems arising out of performance under contract.

Procurement by negotiation is the art of arriving at a common understanding through bargaining on the essentials of a contract, such as delivery, specifications, price, and terms. Because of the interrelation of these factors with many others, it is a difficult art and requires experience and the exercise of judgment, tact, and common sense. An effective negotiator must be thoroughly prepared and aware of the strengths and weaknesses of his/her position versus the other party to the negotiation. Only through an awareness of relative bargaining strength can a negotiator know where to be firm or where he/she may make permissive concessions in price or terms.

Competitive negotiation really begins with the development of the Request for Proposals (RFP). A well prepared RFP will strengthen the negotiator's position.

Negotiation consists of four equally important steps: Preparation for Negotiation, Conduct of Negotiation, Post Negotiation Actions and Review of Lessons Learned.

PREPARATION:

Plan sufficient time for the negotiation process. Insufficient time leads to hasty decisions. The vendor will sense the pressure of time and take advantage of the situation.

Make a methodical study of all proposals and compare prices, terms and conditions. This will provide the negotiator with the facts required to place the burden on the vendor to justify prices or contractual terms that appear unwarranted. Notes should be made of issues which are likely to arise during negotiation and plans made to deal with these issues. Determine from the proposals those areas in which assistance may be required; technical, engineering, legal, etc.

If a market survey was not conducted prior to issuing the RFP, conduct one. This type information is essential to sound negotiation.

Establish the parameters for specific points in the RFP and vendor proposals that might be traded for more important issues.

Determine the bargaining authority of the vendor representative. Insist on dealing with someone with full authority to commit the vendor. Otherwise, you may have to do the job twice.

Arrange for adequate facilities for the negotiations.

Prepare an agenda.

Be prepared. Study all issues thoroughly. Do not go into a session without having done your homework! Negotiate with the confidence gained from advanced preparation. If unsure contact DPS for assistance in negotiation.

CONDUCTING NEGOTIATIONS:

There are many ways in which negotiations may be conducted. Therefore, each negotiator must develop the techniques which they can utilize most effectively.

Outline the important contract issues and obtain the vendor's position on each. The vendor may not want to consider the logic of the negotiator's position until he/she has explained his/her side of the issue. Try to identify the areas of weakness in the vendor's position.

The negotiator should then make his or her own position known in general terms, citing such areas as policy or budget as justification for the position. This places the burden on the vendor to find a way to comply or justify the exception.

Here, the negotiator brings into play the information gained in the market survey and the competitors' proposals without disclosing what the competition offered. When the vendor disputes the validity of the information, require him to provide the specific information on which his position is based; i.e., cost price analysis.

Reach an agreement on the most important issues before discussing the less important items. If agreement cannot be reached on the major items, the negotiator may use the minor issues for bargaining on the major issues. Be prepared to explore alternatives in the event of disagreement.

Reach an agreement on all contract terms.

One person should be designated as the spokesperson and negotiate for the agency. Team participation in the actual negotiation may be required but the agency's position is finalized by the spokesperson.

POST NEGOTIATION ACTIONS:

Be sure all participants fully understand what has been agreed to.

Reduce the agreements to writing and have both parties sign.

Prepare the final contract, obtain necessary signature and any required supporting documents.

REVIEW OF LESSONS LEARNED:

Critique the negotiations with members of your team, pointing out the strong and weak points observed during the negotiation.

Determine if future requirements can be competitively bid.

DO'S AND DON'TS OF NEGOTIATION

DO'S

Develop your own technique for negotiations.

Be well prepared.

Identify each point to be negotiated.

Establish parameters of discussion for each point.

Determine whether you wish to seek resolution of important issues or small issues first.

Try to settle one point before moving to the next.

Discuss budget limitations, policy and restrictions related to the program.

Be prepared to discuss alternatives.

Negotiate on an even basis. If the vendor has legal or technical support, bring you qualified counterparts.

Avoid arguments.

Avoid interruption.

Avoid quick deals.

Be ethical, fair and firm.

Control the negotiation session.

Attempt to reach a WIN-WIN result e.g. both parties at the conclusion of the negotiation of the negotiation believe they have reached a satisfactory contract.

DON'TS

Under estimate the ability of the vendor.

Disclose the specific contents of other proposals.

Negotiate areas beyond the scope of the solicitation.

Make a concession without obtaining a concession.

Accept the first no.

Be unreasonable or unfair.

Negotiate to the point that the price is no longer fair and reasonable.